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Attorney for Defendant Josef F. Boehm

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ALASKA

Sally C. Purser,)	
)	DEFENDANT JOSEF BOEHM'S REPLY TO
Plaintiff,)	OPPOSITION TO MOTION FOR LEAVE TO
)	FILE SUPPLEMENTAL MEMORANDUM OF
v.)	POINTS AND AUTHORITIES IN SUPPORT
)	OF OPPOSITION TO PLAINTIFF'S
Josef F. Boehm, Allen K.)	SECOND MOTION FOR SUMMARY
Bolling, and Bambi Tyree,)	JUDGMENT
)	
Defendants.)	
)	
)	
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)	
)	

CASE NO.: A05-0085 (JKS)

I. INTRODUCTION AND ARGUMENT

Plaintiff filed her Second Motion for Summary Judgment on December 14, 2006. The Motion was filed without the attached affidavits of Plaintiff and former defendant Bambi Tyree. Plaintiff omitted their attachment due to her desire to have them filed under seal. The affidavits were the sole support for the Motion. Even

1 without the inclusion of the affidavits, the statutory period
2 continued to run to the detriment of Boehm.

3 Plaintiff argues that the reply did not raise any new issues and
4 the material sought to be filed with the surreply was available long
5 before his filed his opposition brief.

6 Plaintiff's argument ignores:

7 1. The fact that the affidavits supporting summary judgment were
8 not received by Defense counsel until December 22, 2006 (eight days
9 after filing);

10 2. The Motion was filed while Defense counsel was in Anchorage
11 Alaska;

12 3. The statutory response period encompassed the Christmas and
13 New years Holidays; and

14 4. The Supplemental Reply contains new argument and evidence not
15 in the possession, custody or control of defense counsel at the time
16 of the original opposition.

17 Boehm's supplemental brings forth additional evidence and
18 contradictions in which to show disputable issues of material fact and
19 inferences to be drawn from the statements made by Purser and Tyree
20 in support of summary judgment.

21 **1. Recorded Transcript of Miranda Ditullio**

22 Ms. Ditullio submitted to a interview with Boehm's investigator
23 Terry Shurtleff. Ms. Ditullio's statements raised new issues with
24 respect to Purser's claims and further refuted any suggestion that
25 Boehm provided drugs to Purser or had sex with Purser.

26 Ms. Ditullio's testimony further confirms the subject matter set
27 forth in the declarations of Vince Blomfield and Tina Arndt.
28

1 In addition, Ms. Ditullio details Purser and Tyree's scam to keep
2 Boehm high on "dirty crack" cocaine and steal from him. Ms. Ditullio
3 denied that Boehm provided drugs to Purser and details Tyree's
4 blackmail of Boehm.

5 **2. Sworn Testimony of Dr. Jacobsen**

6 Plaintiff argues that Dr. Jacobsen's "sworn testimony" from the
7 sentencing hearing was not recently obtained information. Conversely,
8 Defense counsel did not retain the Sentencing Hearing audio discs from
9 the court until mid December, 2006. The audio discs were then sent for
10 transcribing. The portion of the transcript containing Dr. Jacobsen's
11 testimony was not received by defense counsel until after the time in
12 which to file the original opposition. *See Declaration of Brett A.*
13 *Greenfield attached hereto and incorporated herein by this reference.*

14 Furthermore, Dr. Jacobsen's "sworn testimony" confirmed the
15 substance of his report as used in Boehm's original opposition.
16 Plaintiff's counsel on one hand argues that he has been sandbagged by
17 the information, then on the other hand argues that he has known about
18 the hearing all along.

19 **3. Declaration of Josef Boehm**

20 In response to Plaintiff's assertion that Boehm's responses to
21 discovery are not sworn under penalty of perjury, Boehm submitted a
22 declaration specifically denying each of the allegations set forth in
23 the Affidavit of Purser and Tyree.

24 Plaintiff's counsel is well aware of the obstacles associated
25 with preparing paperwork and having it viewed by Boehm while
26 incarcerated approximately 150 miles away from defense counsel's
27 office. The Scheduling and Planning Order identifies the challenges
28

1 facing counsel in attempting to furnish paperwork to Boehm and receive
2 signed documents in a timely fashion.

3 The less than statutory time period allowed for Boehm's response
4 to Summary Judgment as a result of Plaintiff counsel's late furnishing
5 of Purser and Tyree's affidavits only complicated matters. Boehm must
6 be allowed to specifically deny the false allegations brought against
7 him in light of Plaintiff counsel's attempt to ignore his specific
8 denials as set forth in his responses to written discovery.

9 **4. Declaration of Terry Shurtleff**

10 Mr. Shurtleff's declaration under penalty of perjury sets forth
11 the circumstances under which his interviews were knowingly recorded,
12 accurately recorded and accurately transcribed. Mr. Shurtleff's
13 declaration does not testify to the truth or falsity of the statements
14 made, only the circumstances under which they were made.

15 The declaration does not in any way undermine or challenge the
16 subject matter of Plaintiff's arguments and was provided for the
17 reasons set forth above.

18 **5. Plaintiff's Expert Dr. Rose, Psychological Evaluation of
19 Purser and Sally Purser Deposition Testimony**

20 Additional comparisons of purser's deposition testimony to
21 statements given to her own expert Dr. Rose reveal significant
22 discrepancies and contradiction leading to a conclusion that inference
23 must be drawn from present statements and genuine issues of material
24 fact.

25 Again, Boehm was not provided the statutory time period in which
26 to respond to Plaintiff's Motion for Summary Judgment and must be
27 allowed to present applicable evidence which raises genuine issues of
28 material fact and evidence that creates inferences to be drawn from

